

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SENARBLE CAMPBELL,
Plaintiff,
v.
ASHLEY SMITH, et al.,
Defendants.

No. 2:21-cv-01172-KJM-CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case is proceeding on Eighth Amendment deliberate indifference and ADA/RA claims against defendants Ashley Smith and Scott Ivey. ECF No. 6 (service order).

While defendant Ivey agreed to waive service of process, ECF No. 12, defendant Ashley Smith could not be located as being employed as a psychologist at Mule Creek State Prison. ECF No. 14. As a result, plaintiff was ordered to complete and return service paperwork in order to properly serve defendant Smith. ECF No. 14. While plaintiff returned the forms, he listed defendant as “Scott Smith” and provided the same service address at Mule Creek State Prison that had already been attempted. ECF No. 17.

On December 1, 2021, the court gave plaintiff two options in order to properly serve defendant Smith. ECF No. 22. Plaintiff was given “the option to: 1) complete the attached USM-

1 285 form in the name of Ashley Smith with a service address that is not Mule Creek State Prison;
2 or, 2) plaintiff may file a motion to amend along with a proposed amended complaint that
3 correctly identifies each defendant if plaintiff has obtained new information concerning the
4 identity of defendant Smith.” ECF No. 22 at 2.

5 Plaintiff failed to comply with the court’s December 1, 2021 order and, instead, returned
6 the forms in the name of Rainelle Smith with a service address of Mule Creek State Prison. ECF
7 No. 23.

8 Accordingly, IT IS HEREBY RECOMMENDED that Ashley Smith be dismissed from
9 this action without prejudice based on plaintiff’s failure to timely serve this defendant. See Fed.
10 R. Civ. P. 4(m).

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
16 objections shall be served and filed within fourteen days after service of the objections. The
17 parties are advised that failure to file objections within the specified time may waive the right to
18 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: January 3, 2022

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21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE
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